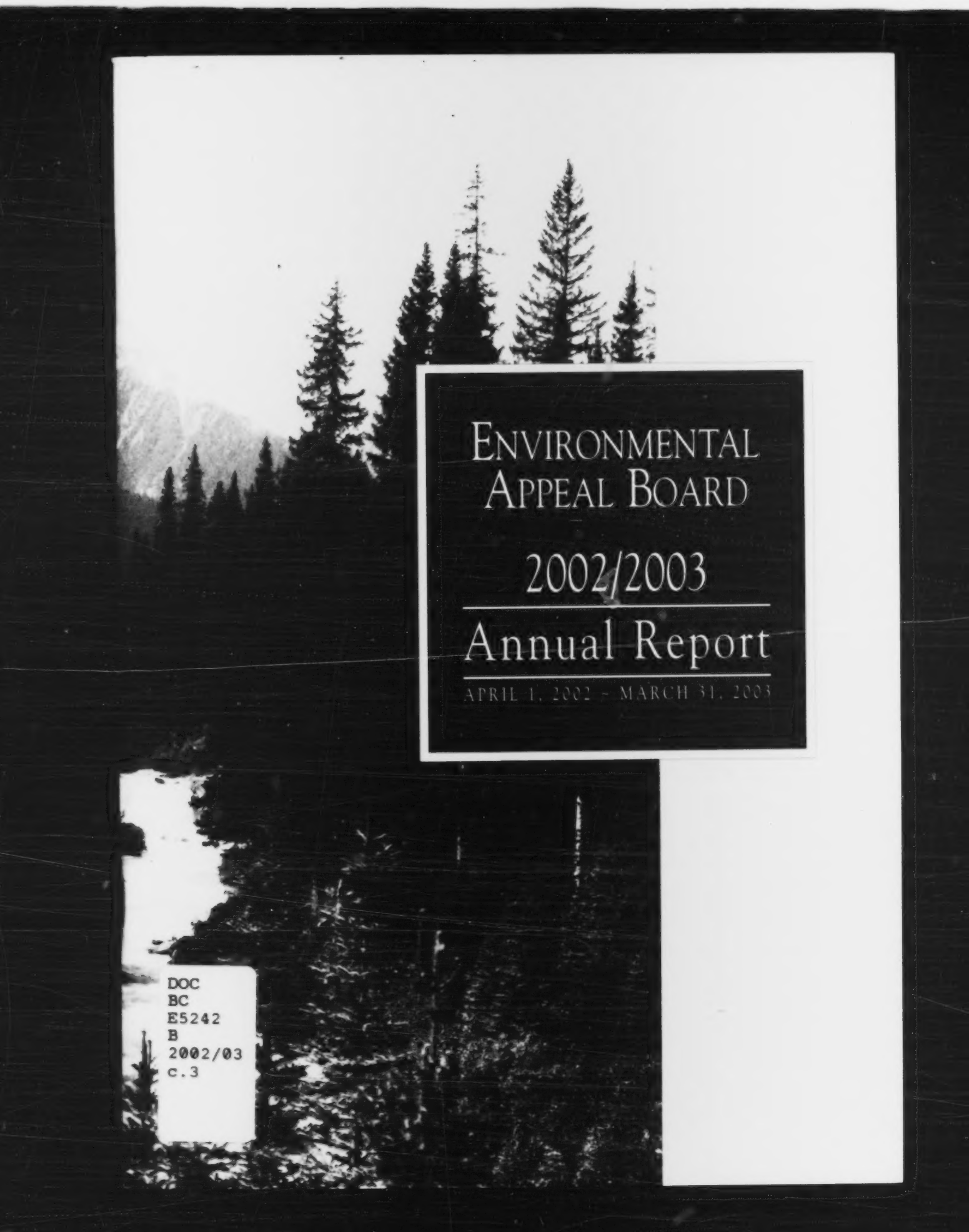


Environmental Appeal Board

2002/2003 Annual Report

APRIL 1, 2002 - MARCH 31, 2003

DOC
BC
E5242
B
2002/03
c.3

LEGISLATIVE LIBRARY OF BRITISH COLUMBIA
3 3298 00284 8050

BRITISH COLUMBIA

Environmental Appeal Board

Fourth Floor, 747 Fort Street
Victoria, British Columbia
Telephone: (604) 387-3464
Facsimile: (604) 356-9923

Mailing Address:
P.O. Box 9425
Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Honourable Bill Barisoff
Minister of Water, Land and Air Protection
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable George Abbott
Minister of Sustainable Resource Management
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Colin Hansen
Minister of Health Services
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Ministers:

I respectfully submit herewith the Annual Report of the Environmental Appeal Board for the period April 1, 2002 through March 31, 2003.

Yours truly,

Alan Andison
Chair
Environmental Appeal Board

LEGISLATIVE LIBRARY
VICTORIA, B.C. V8V 1X4
MAY 4 2004

AR
02/03

Table of Contents

Message from the Chair	5
Introduction	6
The Board	7
Board Membership	7
The Board Office	8
Policy on Freedom of Information	8
Legislative Amendments Affecting the Board	9
The Appeal Process	10
Recommendations	11
Statistics	13
Summaries of Environmental Appeal Board Decisions	15
Summaries of Court Decisions Related to the Board	36
Summaries of Cabinet Decisions Related to the Board	37
Appendix I Legislation and Regulations	38

Canadian Cataloguing in Publication Data
British Columbia. Environmental Appeal Board.
Annual report of the Environmental Appeal Board.
-- 1990 / 91 -

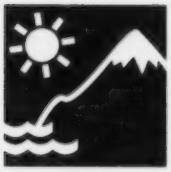
Annual.
Report year ends June 30.
ISSN 11-88-021X

1. British Columbia. Environmental Appeal Board - Periodicals. 2. Environmental law - British Columbia - Periodicals. 3. Pollution - Law and legislation - British Columbia - Periodicals. I.

KEB421.A49E58 354.7110082'321 C91-092316-7

ENV126788.1192

104-05177/



Message from the Chair

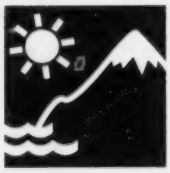
I am pleased to submit the twelfth Annual Report of the Environmental Appeal Board.

The number of appeals filed with the Board increased slightly over this report period from 128 in 2001/02, to 133 this report period. The number of appeals filed under the *Water Act* and *Pesticide Control Act* decreased marginally, while the number of appeals filed under the *Waste Management Act* and *Wildlife Act* increased marginally. Appeals filed under the *Health Act* increased significantly. The most complex appeals are those under the *Waste Management Act* and the *Pesticide Control Act*.

A number of Board members have departed during this reporting period. On behalf of the entire Board, I wish to thank Glen Ewan, Marilyn Kansky, Jane Luke, Tawfiq Popatia, Carol Quin, Bob Radoff and Joan Young for their hard work and contributions to the Board. Four new members were appointed to the Board and I would like to welcome James Hackett, Katherine Lewis, David Ormerod and Lorraine Shore. These new members are also members of the Forest Appeals Commission.

As a result of Phase 1 of the Administrative Justice Review Project released on February 5, 2002, all members of the Environmental Appeal Board were cross-appointed to the Forest Appeals Commission.

Alan Andison



Introduction

The Environmental Appeal Board hears appeals from administrative decisions related to environmental issues. The information contained in this report covers the period of time between April 1, 2002 and March 31, 2003.

The report provides an overview of the structure and function of the Board and how the appeal process operates. It contains statistics on appeals filed, hearings held and decisions issued by the Board within the report period. It also contains the Board's recommendations for legislative changes to the statutes and regulations under which the Board has jurisdiction to hear appeals. Finally, summaries of the decisions issued by the Board during the report period are provided and sections of the relevant statutes and regulations are reproduced.

Decisions of the Environmental Appeal Board are available for viewing at the Board office, on the Internet, and at the following libraries:

- Legislative Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Court House Library Society
- West Coast Environmental Law Library

Decisions are also available through the Quicklaw Data Base.

Information about the Environmental Appeal Board is available from the Board office and on the Board's website. Detailed information on the Board's policies and procedures can be found in the Environmental Appeal Board Procedure Manual. Pamphlets explaining the appeal procedure under each of the relevant statutes are also available. Please feel free to contact the office if you have any questions, or would like additional copies of this report. The Board can be reached at:

Environmental Appeal Board
Fourth Floor, 747 Fort Street
Victoria, British Columbia
V8W 3E9

Telephone: (250) 387-3464

Facsimile: (250) 356-9923

Website Address:
www.eab.gov.bc.ca

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

The Board

The Environmental Appeal Board is an independent agency established under the *Environment Management Act*. It hears appeals from administrative decisions made under six statutes. Four of the statutes are administered by the Ministry of Water, Land and Air Protection. They are the *Commercial River Rafting Safety Act*, the *Pesticide Control Act*, the *Waste Management Act* and the *Wildlife Act*. The Water Act is administered by the Ministry of Sustainable Resource Management. The sixth statute, the *Health Act*, is administered by the Ministry of Health Services.

Board Membership

The Board members are appointed by the Lieutenant Governor in Council (Cabinet) under section 11(3) of the *Environment Management Act*. The members are drawn from across the Province, representing diverse business and technical experience, and have a wide variety of perspectives. Board membership consists of a full-time chair, one or more part-time vice-chairs, and a number of part-time members.

The Board	From
Chair	
Alan Andison	Victoria
Vice-chair	
Jane Luke (to October 29, 2002)	Vancouver
Cindy Derkaz	Tappen
Members	
Robert Cameron	North Vancouver
Richard Cannings	Naramata
Tracey Cook	Victoria
Don Cummings	Penticton
Joanne Dunaway	Vancouver
Margaret Eriksson	Vancouver
Glen Ewan (to October 26, 2002)	Golden
James Hackett (from November 21, 2002)	Nanaimo
Fred Henton	Nanoose Bay
Marilyn Kansky (to October 29, 2002)	Victoria
Katherine Lewis (from November 21, 2002)	Prince George
David Ormerod (from November 21, 2002)	Victoria
Tawfiq Popatia (to October 26, 2002)	Vancouver
Carol Quin (to April 25, 2002)	Hornby Island
Bob Radloff (to November 2, 2002)	Prince George
Lorraine Shore (from November 21, 2002)	Vancouver
Barbara Thomson	Victoria
Phillip Wong	Vancouver
Joan Young (to October 26, 2002)	Victoria

The Board Office

The Environmental Appeal Board office staffs nine full-time employees reporting to a General Counsel/Executive Director and the Chair. The office provides registry services, legal advice, research support, systems support, financial and administrative services, training and communications support for the Board.

The Environmental Appeal Board shares its staff and its office space with the Forest Appeals Commission. The Forest Appeals Commission, set up under the *Forest Practices Code of British Columbia Act*, hears appeals from forestry-related administrative decisions made under that Act, the *Forest Act* and the *Range Act*, in much the same way that the Board hears environmental appeals.

Each of the tribunals operates completely independently of one another. Supporting two tribunals through one administrative office gives each tribunal greater access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Board by one party must also be provided to all other parties to the appeal.

The Board is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If a member of the public requests information regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Board is subject to public scrutiny and review.

Legislative Amendments Affecting the Board

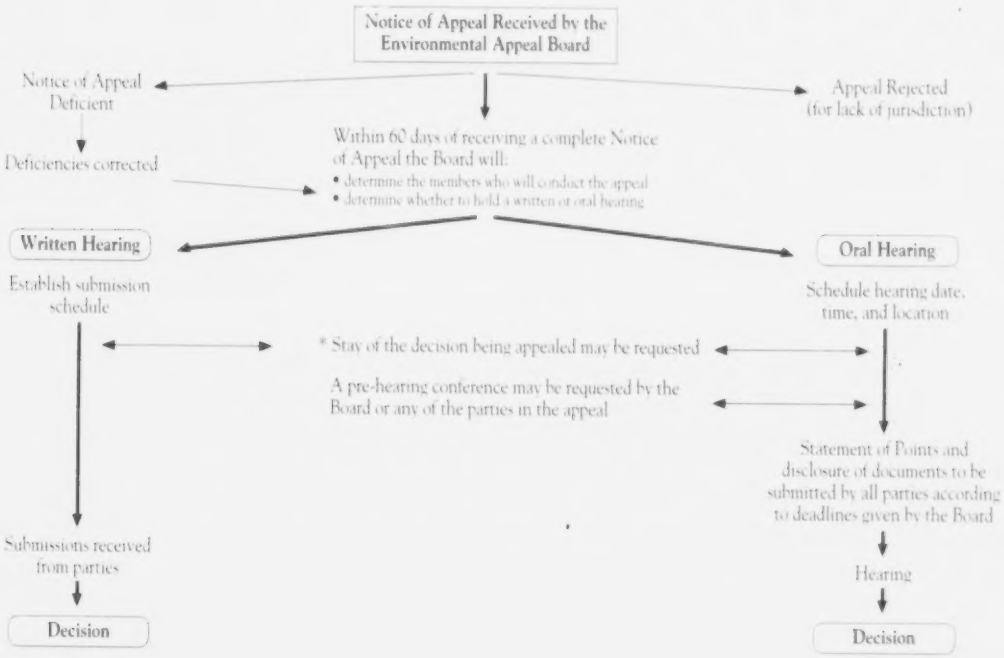
In this report period, the Board was not affected by any amendments to the statutes and regulations under which the Board has jurisdiction to hear appeals.

The Appeal Process

The *Environment Management Act* and the *Environmental Appeal Board Procedure Regulation* set out the general powers and procedures of the Board. The Board's authority is further defined in the statutes and regulations under which the Board has jurisdiction to hear appeals.

In order to ensure that the appeal process is open and understandable to the public, the Board has developed the Environmental Appeal Board Procedure Manual. The manual contains information about the Board itself, the legislated procedures that the Board is required to follow and the policies the Board has adopted to fill in the procedural gaps left by the legislation.

The following is a brief summary of the appeal process. For more detailed information, a copy of the Board's Procedure Manual can be obtained from the Environmental Appeal Board office, or from the Board's website.


Notice of Appeal Received by the Environmental Appeal Board
Notice of Appeal Deficient
Deficiencies corrected
Appeal Rejected (for lack of jurisdiction)
Within 60 days of receiving a complete Notice of Appeal the Board will:
• determine the members who will conduct the appeal
• determine whether to hold a written or oral hearing
Written Hearing
Establish submission schedule
Oral Hearing
Schedule hearing date, time, and location
* Stay of the decision being appealed may be requested
A pre-hearing conference may be requested by the Board or any of the parties in the appeal
Statement of Points and disclosure of documents to be submitted by all parties according to deadlines given by the Board
Submissions received from parties
Hearing
Decision
Decision

* The Board's authority to issue a stay varies from one statute to the next.

Recommendations

Operation of the Board

In the Board's 2001/2002 Annual Report, the Board outlined its involvement in the Administrative Justice Project. As part of that project, the Board submitted two reports to the government and made recommendations on how the appeal process could be improved.

On February 5, 2002, the government directed the Board to implement the recommendations that it made in its first report (Phase 1 Report); namely, to consolidate the Board with the Forest Appeals Commission into a single tribunal, allowing for further administrative efficiencies through shared services and cross-appointments.

Between April 1, 2002 and March 31, 2003, most of the cross-appointments were made and a Request For Legislation was prepared to consolidate the two tribunals. The Board has no further recommendations to make with respect to the operation of the Board at this time.

Health Act

The Board has previously made recommendations in the annual reports for 1998/1999 and 2000/2001 relating to the posting and notice requirements under the *Sewage Disposal Regulation* and regarding the wording of the 30-day appeal period specified under the *Health Act*. The recommendations were based upon concerns that the legislation created confusion as to when the appeal period begins and ends and that this may result in unfairness and uncertainty to appellants, property owners and others affected by the appeal process.

The Board continues to recommend that changes be made to the *Act* and/or the *Regulation* to ensure that the public has a fair opportunity to obtain information about permits being issued that may affect them, and to appeal those permits within the specified appeal period.

In addition, it has become apparent over the years that the *Regulation* as a whole is outdated; it has not kept up with advances in the knowledge and technology related to sewage disposal. The Board recommends that the *Regulation* be amended to reflect current technology and knowledge.

Environment Management Act, Waste Management Act, Pesticide Control Act and *Commercial River Rafting Safety Act*

The legislative assembly is currently considering significant amendments to these statutes. Therefore, the Board will not provide

comment or make recommendations until the legislative process is complete.

Water Act and *Wildlife Act*

The Board has no recommendations in relation to appeals under these statutes.

Statistics

The following tables provide information on the appeals filed with the Board, and decisions published by the Board, during the report period. The Board publishes all of its decisions on the merits of an appeal, and most important preliminary and post-hearing decisions. The Board also issues numerous unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

Between April 1, 2002 and March 31, 2003 a total of 133 appeals were filed with the Board against 108 administrative decisions, and a total of 124 decisions were published.

April 1, 2002 – March 31, 2003

Total appeals filed		133
Number of administrative decisions appealed		108
Appeals abandoned, withdrawn, or rejected		66
Hearings held on the merits of appeals		
Oral hearings completed	24	
Written hearings completed	10	
***Total hearings held on the merits of appeals**		34
Total oral hearing days		56
Published decisions issued		
Final decisions		
Appeals allowed, allowed in part	17	
Appeals dismissed	50	
Total final decisions		67
Decisions on preliminary matters		47
Consent orders		1
Decisions on costs		
Costs awarded, in part	1	
Costs denied	8	
Total costs decisions		9
Total published decisions issued		124

*Note: Most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings on the merits of the appeal have been included in this statistic.

Appeal Statistics by Act

	Health Act	Pesticide Control Act	Waste Management Act	Water Act	Wildlife Act
Appeals filed during report period	29	8	34	35	27
Number of administrative decisions appealed	22	5	20	34	27
Appeals abandoned, withdrawn or rejected	14	4	11	32	5
Hearings held on the merits of appeals					
Oral hearings	9	3	4	8	0
Written hearings	2	2	2	1	3
Total hearings held on the merits of appeals	11	5	6	9	3
Total oral hearing days	14	12	18	12	0
Published decisions issued					
Final decisions	15	12	21	10	9
Preliminary applications	11	4	14	10	2
Costs	3		6		
Consent orders					1
Jurisdiction/standing	1		4	1	
Total published decisions issued	30	16	45	21	12

▲ This table provides a summary of the appeals filed, hearings held and published decisions issued by the Board during the report period, categorised according to the statute under which the appeal was brought. There were no appeals filed, heard or decisions issued under the *Commercial River Rafting and Safety Act* during the report period.

◀ This table provides an overview of the total appeals filed, hearings held, and published decisions issued by the Board during the report period. It should be noted that the number of decisions issued and hearings held during the report period does not necessarily reflect the number of appeals filed for the same period, because the appeals filed in previous years may have been heard or decided during the report period.

It should also be noted that two or more appeals may be heard together.

Decisions issued by the Board under each Statute

In an appeal, the Board will decide whether to allow the appeal, dismiss the appeal or return the matter back to the original decision-maker with directions. The Board may also be required to deal with a number of preliminary matters such as requests for stays, applications regarding standing and questions regarding the Board's jurisdiction.

The following tables provide a summary of the published decisions issued by the Board, including any decisions regarding preliminary matters dealt with by the Board.

Health Act

Administrative Decision Appealed	Preliminary Matter	Appeal Allowed	Appeal Allowed in Part	Appeal Dismissed	Appeal Dismissed with Recommendations	Consent Order	Application for Costs	Jurisdiction/Standing Dismissed
Refusal to issue a permit		1		3				
Issuance of a permit	11		3	7			3	
Application to repair				1				
Cancel permit								1

Pesticide Control Act

Administrative Decision Appealed	Preliminary Matter	Appeal Allowed	Appeal Dismissed	Appeal Dismissed subject to amendments	Referred back to Original Decision-maker	Application for Costs
Issuance of a permit	2		9			
Pest Management Plan	2		3			

Waste Management Act

Administrative Decision Appealed	Preliminary Matter	Appeal Dismissed	Appeal Allowed	Appeal Allowed in Part	Application for Costs	Jurisdiction/Standing Dismissed	
Issuance of permit	1	3	2		1		
Amendment of a permit	6	4		5			
Remediation order	7	2	2		4	4	
Issuance of approval		1		1	1		
Site investigation order	1	1					

Water Act

Administrative Decision Appealed	Preliminary Matter	Appeal Allowed in Part	Appeal Allowed	Appeal Dismissed	Consent Order	Jurisdiction/Standing Dismissed
Refusal to issue a licence			1	2		
Cancellation or suspension of a licence	1			1		
Issuance of conditional licence	2	1		3		
Order of Comptroller	3					1
Payment of water licences			1			
Order of Engineer	3			1		
Order of Water Manager	1					

Wildlife Act

Administrative Decision Appealed	Preliminary Matter	Appeal Allowed	Appeal Allowed in Part	Appeal Dismissed	Consent Order
Refusal to issue a licence or permit				3	
Change to quota under a licence				4	1
Suspension or cancellation of a licence or permit			1		
Registration of trapline	2				
Issuance of a licence or permit				1	

Summaries of Environmental Appeal Board Decisions

April 1, 2002 ~ March 31, 2003

The Board issues hundreds of decisions each year, some that are published and others that are not published. A selection of published decisions have been summarized below. The decisions were issued by the Board between April 1, 2002 and March 31, 2003. They are organized according to the statute under which the appeal was filed.

Commercial River Rafting Safety Act

No decisions were issued under the *Commercial River Rafting Safety Act* during the report period.

Health Act

2002-HEA-003 Don Cox and Shirley Cox v. Environmental Health Officer
Decision Date: June 26, 2002
Panel: Joan Young

Don and Shirley Cox appealed the decision of the Environmental Health Officer ("EHO") to refuse them a permit to construct a sewage disposal system on their property in Saltaire. The EHO rejected the application because of insufficient depth of natural soil above the water table, the need for an easement for interceptor drains already in place, and the need for a 50-foot setback to a nearby retaining wall. The Appellants also applied for an order of costs against the Respondent, EHO.

The Board found that a wet weather assessment was necessary to determine whether the soil on the property met the minimum depth requirement; the Appellants had no legal authorization for their perimeter drains to drain water over their neighbour's property; and there was a potential for breakout along a retaining wall. In all of the circumstances, the permit was properly refused.

The appeal was dismissed. The Appellants' request for costs was denied.

2002-HEA-004 Chevron Canada Ltd. v. Public Health Inspector
Decision Date: September 25, 2002
Panel: Alan Andison

Chevron Canada Ltd. ("Chevron") appealed the decision of the Public Health Inspector to refuse its application for a sewage disposal permit. Chevron sought to change its existing sewage disposal system to accommodate a proposed expansion of its gas station to include an on-site White Spot restaurant. Chevron argued that the permit should be approved under section 7(2) of the *Sewage Disposal Regulation* because the proposed system is an alteration to the current system that was built prior to 1985.

The Board found that section 7(2) did not apply in this situation because Chevron's expanded operations would result in completely different sewage disposal needs than the original system was serving. It was not simply an "alteration", it was a new system.

The Board also held that the ultimate test for any permit application is whether the proposed system poses a health hazard. The Board concluded that it was reasonable to believe that the system proposed by Chevron would create a public health risk due to the limitations of the site. There was a risk of effluent breakout and overload. The application for a permit was properly refused.

The appeal was dismissed.

2002-HEA-005 Daryl Youlden v. Environmental Health Officer

Decision Date: October 15, 2002

Panel: Alan Andison

Daryl Youlden appealed the decision of the EHO to refuse his application for a permit to construct a conventional septic tank system on his property in Cowichan Bay.

The Board found that the depth of soil above the water table was not adequate to attenuate the effluent and protect the public health from the risk of groundwater contamination or effluent breakout. The Board also found that there is no legislated 100-foot setback from Cowichan Bay (a tidal water body), as the setback from a "high water mark" required by the *Sewage Disposal Regulation* refers to non-tidal water. Although the EHO has discretion to determine the appropriate setback from tidal water, the Board held that it had insufficient information to make a finding as to the appropriate setback from Cowichan Bay in this case. The permit was properly refused.

The appeal was dismissed.

2002-HEA-006(a) to 009(a) Frank Del Puppo, Roy Leakey, Helena McKay, Doug Pearse v. Environmental Health Officer (King Coho Resort Ltd., Third Party)

Decision Date: April 12, 2002

Panel: Alan Andison

The Appellants appealed the decision of the EHO to issue a permit to the Third Party allowing it to construct a sewage disposal system on its property near Comox. The EHO applied to have the appeals dismissed on the grounds that the Appellants were not persons who were "aggrieved" by the issuance of the permit and, as such, had no standing to appeal the permit. The EHO also applied to have the appeals heard by way of written submissions if the Board decided that the Appellants had standing to appeal.

The Board found that each of the Appellants resided sufficiently close to the development that their interests could be negatively impacted if the proposed system did not adequately protect the public health. Accordingly, the Board found that the Appellants were persons aggrieved and had standing to appeal.

The Board also concluded that any evidence and submissions relating to the appeals could be fully and fairly provided by way of written submissions.

Accordingly, the application to dismiss the appeals for lack of standing was denied, and the application to conduct the appeals by way of written submissions was granted.

2002-HEA-006(b) to 009(b) Frank Del Puppo, Roy Leakey, Helena McKay, Doug Pearse v. Environmental Health Officer (King Coho Resort Ltd., Third Party)

Decision Date: July 16, 2002

Panel: Don Cummings

The Appellants each appealed the decision of the EHO to issue a permit to construct a

sewage disposal system to service a six-unit condominium and 10 recreational vehicle sites, which were the second phase of a series of expansions planned for a resort owned by the Third Party near Comox.

The Board found that a reserve field was not required for the proposed system; there was nothing in the *Health Act* or the *Sewage Disposal Regulation* to prevent the Third Party from developing its property in stages and constructing several separate systems; that effluent would not breakout from the system and impact the public health and local shellfish; and that an engineer's report, submitted by the Third Party, adequately addressed the public health issues associated with the proposed system.

The Board also found that, while previous permits can serve as a guide when reviewing future applications, the EHO's discretion to apply conditions to a permit must be based on the particular application. Therefore, it would be inappropriate to simply apply previous permit conditions to the present permit. The permit was properly issued.

The appeals were dismissed.

2002-HEA-010 John Berger v. Environmental Health Officer
Decision Date: July 31, 2002
Panel: Alan Andison

John Berger appealed the decision of the EHO to refuse his application to repair a sewage disposal system on his property in Courtenay.

The Board found that a garage had been built within seven feet of the disposal field, despite the 10-foot setback requirement found in the *Sewage Disposal Regulation*; the perimeter drain was a potential breakout point and posed a risk to public health; the Appellant's property suffers from a high seasonal water table which may result in untreated effluent being directly discharged into the water table; and that the failure of the distribution box to evenly distribute effluent to the four disposal lines had shortened the life of the absorption field. The Board was not satisfied that the proposed repairs to the distribution box and clogged lines would protect public health.

The Board concluded that the existing sewage disposal system, when repaired according to the Appellant's proposal, may constitute a health hazard. The application to repair the system was properly refused.

The appeal was dismissed.

2002-HEA-015 Janette O'Flaherty v. Senior Environmental Health Officer (Robert and Beverly Stuart, Third Party)
Decision Date: January 31, 2003
Panel: Alan Andison

Janette O'Flaherty appealed the decision of the EHO to issue a permit for construction of a sewage disposal system on a neighbouring waterfront property on Thetis Island. After the hearing concluded, the Appellant applied to re-open the hearing in order to introduce new expert opinion evidence.

The Board found that the Appellant lacked a good reason for failing to produce the new evidence in a timely fashion. However, the Board agreed to consider parts of the new evidence that had not previously been presented.

On the totality of the evidence, the Board concluded that the proposed system will adequately protect the public health and the environment. The Board found that the proposed system would operate and be maintained in an effective manner given the site conditions on the Third Party's property. The system design met the *Sewage Disposal Regulation* requirements and was sufficient to protect the ocean and the foreshore environment.

The appeal was dismissed.

Both the Appellant and the Third Party

applied for costs. The Board found that the Appellant's introduction of new evidence after the hearing had concluded was an abuse of process, delayed the hearing, and resulted in additional costs to the other parties. Therefore, the Third Party's request for costs was allowed in part. The Appellant's request for costs was denied.

2002-HEA-019 Henry Davidson v. Environmental Health Officer
Decision Date: October 15, 2002
Panel: Don Cummings

Henry Davidson appealed the decision of the EHO to refuse his application for a sewage disposal permit for his property near Elkford, on the grounds that the EHO erred by relying on a 1980-floodplain map to conclude that the property was within the 20-year floodplain for the Elk River.

The Board found that the elevations shown on the 1980-floodplain map may be inaccurate and there was no indication that the EHO conducted any other investigations to determine the probability of flooding on the Appellant's property. The Board also found that the EHO had fettered his discretion by rigidly applying a policy when he rejected the permit. Accordingly, the Board rescinded the EHO's decision and ordered the permit application to be reconsidered based on more complete information and investigations.

The appeal was allowed.

2002-HEA-026 Word of Mouth Construction Ltd. v. Chief Environmental Health Officer
Decision Date: October 31, 2002
Panel: Tracey Cook

Word of Mouth Construction Ltd. appealed the decision of the EHO to cancel its sewage disposal permits. The preliminary issue in this case was whether the Board has jurisdiction to hear an appeal from a permit cancellation.

The Board found that it does not have such jurisdiction. Section 8(4) of the *Health Act* sets out only two categories of decisions that may be appealed to the Board: the issuance or the refusal of a permit. A permit cancellation is not covered by the language of section 8(4). Therefore, the appeal was rejected for lack of jurisdiction.

The appeal was dismissed.

2002-HEA-025(a), 027(a), 028(a) Arrowsmith Watersheds Coalition Society, French Creek Residents Association, Regional District of Nanaimo v. Environmental Health Officer (Combined Forest Holdings Ltd., Third Party)
Decision Date: November 18, 2002
Panel: Alan Andison

The Appellants filed separate appeals of the EHO's decision to issue Combined Forest Holdings Ltd. a permit to construct a sewage disposal system for a subdivision near Parksville.

The EHO applied to have their appeals dismissed for lack of standing. The EHO argued that the Appellants were not persons "aggrieved" by the permit issuance as required under section 8(4) of the *Health Act*.

The Board found that the Appellants had standing to appeal the permit. The Board noted that the Appellants all raised concerns about potential groundwater contamination and that some of the Appellants represented the interests of people who could be negatively impacted by the proposed system.

The applications to dismiss the appeals were denied.

2002-HEA-022 & 2002-HEA-023 Paul Scrimger, Sandra Scrimger and Greg Carmichael and Rick Todd v. Environmental Health Officer (Gary Lewis, Third Party)
Decision Date: January 21, 2003
Panel: Alan Andison*

Paul Scrimger, Sandra Scrimger and Greg Carmichael and Rick Todd filed separate appeals against the decision of the EHO to issue a permit for construction of a sewage disposal system for a waterfront property on Prospect Lake.

The Board found that the system complied with the requirement in the *Sewage Disposal Regulation* for a 100-foot setback between the absorption field and the high water mark of the lake. The Board also found that the absorption field would be approximately 50 feet from any potential downslope breakout points and that this distance could be reduced given the high level of effluent treatment provided by the proposed system. The Board found that the soil conditions on the property, combined with the addition of a sand mound in the absorption field, were sufficient to protect public health, and that the site investigation complied with section 3(3) of the *Regulation*.

Although there was a brief delay in posting the notice of the permit, the Board found that this minor deficiency did not prejudice the interests of the Appellants, and the Third Party promptly contacted the immediate neighbours.

The appeals were dismissed.

2002-HEA-030/031/032 Christine and Dan Webb, Waco and Kim Wallace, Alex and Clover Quesnel, Gordon and Carol Webb and Kevin King v. Environmental Health Officer (No. 3 V.C. Ventures Ltd., Third Party)
Decision Date: February 12, 2003
Panel: Alan Andison, Fred Henton, David Ormerod

Christine and Dan Webb, Waco and Kim Wallace, Alex and Clover Quesnel, Gordon and Carol Webb, and Kevin King filed a joint appeal against three decisions of the EHO. The EHO issued three sewage disposal permits for three lots in Saanich, owned by the Third Party.

The Board found that the proposed systems complied with all required setbacks and that the soil conditions on the lots, combined with the addition of C33 sand to the absorption area, were sufficient to protect public health. The Board also found that a decommissioned well, located within the standby area adjacent to the absorption field, was properly capped and sealed. The permits were upheld, however, the EHO was ordered to amend the permits to address responsibility for future maintenance of the systems.

Finally, the Board requested submissions on whether the Third Party should be ordered to pay the appeal costs of the Appellants, because it failed to post notice of the permits as required by the *Sewage Disposal Regulation*. A decision as to whether costs were allowed was not made during this reporting period.

The appeals were allowed in part.

Pesticide Control Act

2001-PES-003(a) Josette Wier v. Deputy Administrator, Pesticide Control Act (Minister of Forests, Morice Forest District, Third Party)
Decision Date: July 23, 2002
Panel: Alan Andison

Josette Wier appealed the decision of the Deputy Administrator to issue a pesticide use permit authorizing the use of monosodium methane arsenate ("MSMA"), sold under the trade name "Glowon," to control spruce bark beetle and mountain pine beetle in the Morice Forest District and

Tweedsmuir Provincial Park. She argued that the application of MSMA would result in an unreasonable adverse effect on the environment and human health contrary to section 6(3) of the *Pesticide Control Act*, and that the majority decision of the court in *114957 Canada Ltee. (Spraytech, Societe d'arrosage) v. Hudson (Town)*, [2001] S.C.J. 42 ("*Spraytech*") affects the legal test applied by the Board in pesticide appeals; namely, the two-step test set out in *Canadian Earthcare Society v. Environmental Appeal Board* (1988), 3 C.E.L.R. (N.S.) 55 (B.C.C.A.). She argued that *Spraytech* indicates that the administrator should apply the "precautionary principle" in deciding whether a proposed pesticide use will cause an unreasonable adverse effect.

The Board found that *Spraytech* does not affect the legal test applied by the Board in pesticide appeals. Specifically, the majority decision does not indicate that Canadian legislation should be presumed to be consistent with the precautionary principle, unless that intention is clearly indicated in the language of the statute. The language of the *Pesticide Control Act* and the *Pesticide Control Act Regulation* does not indicate that the administrator and the Board should consider the precautionary principle when deciding whether a pesticide use will cause an unreasonable adverse effect. However, the Board noted that the two-step test applied in pesticide appeals is consistent with the "precautionary approach" defined in the *Rio Declaration*. The Board also found that the legal test set out in *Canadian Earthcare Society* is consistent with the findings in *Spraytech* with regard to the function of the federal *Pest Control Products Act*.

On the facts of the appeal, the Board found that the total volume of MSMA allowed under the permit was excessive and should be reduced. Subject to this amendment, the Board was satisfied that the application of MSMA under the permit would not cause an adverse affect and therefore it did not need to consider the second part of the *Canadian Earthcare Society* test, which is to undertake a risk benefit analysis to ascertain whether any adverse affects would be unreasonable. Accordingly, the permit was upheld.

The appeal was dismissed.

2001-PES-005/006/007/011 and 2001-PES-010
Rianne Matz and Lindy LeBlanc v. Deputy Administrator, Pesticide Control Act (Weyerhaeuser Company Limited, and Weyerhaeuser Company Limited doing business as Northwest Hardwoods Delta, Third Parties)
Decision Date: May 29, 2002
Panel: Alan Andison, Jo Dunaway, Fred Henton

Rianne Matz appealed the decisions of the Deputy Administrator to issue four pesticide use permits authorizing the use of the pesticides Vision and Release on a number of cutblocks. Two permits were issued to Weyerhaeuser, and two were issued to Weyerhaeuser doing business as Northwest Hardwoods Delta. Lindy LeBlanc appealed one permit but did not make submissions or attend the appeal hearing. Her appeal was therefore dismissed.

Regarding Ms. Matz' appeal, the Board found that Weyerhaeuser did not breach the Act, the *Regulation*, or the permits by applying pesticides before the 30-day appeal period expired. The Board also found that the pesticide treatments that occurred in 2001 did not render the appeal moot, because the permits did not expire until the end of 2003, and not all areas were treated in 2001.

The Board found that the permits contained conditions that were consistent with the pesticide label restrictions; there was no site-specific evidence to establish that the permitted pesticide use would have an adverse effect on wildlife or humans; and the permits contained conditions to protect the environment and human health. The

Board found that there was no evidence that Weyerhaeuser would be unable to apply the pesticides in accordance with their labels or the conditions of the permits. Since there was no evidence of an adverse effect on the environment or humans, there was no need to proceed to the second stage of the test.

The appeals were dismissed.

2001-PES-009(b) Kwicksutaineuk ah-kwa-mish Tribes, Gwawaenuk Tribe, Tsawataineuk Tribe, Musgamagw Tsawataineuk Tribal Council, Blackfish Lodge, Nakia Lodge, Echo Bay Resort, Mainland Enhancement of Salmonid Species Society, Broughton Archipelago Stewardship Alliance, Raincoast Research Society v. Deputy Administrator, Pesticide Control Act (International Forest Products Ltd., Third Party)
Decision Date: May 8, 2002
Panel: Alan Andison

The Appellants appealed the decision of the Deputy Administrator to issue a pesticide use permit to International Forest Products Limited ("Interfor") to allow the application of Vision on a number of cutblocks. The Appellants requested that the permit be revoked or substantially amended. The Appellants argued that the Deputy Administrator had insufficient information to assess whether the use of Vision would have an unreasonable adverse effect on the environment and there was inadequate consultation with First Nations before the permit was issued.

The Board found that the Deputy Administrator had sufficient information about the potential adverse effects of Vision and sufficient site-specific information about the area to be treated, to determine whether there would be unreasonable adverse effects on the environment. However, the Board found that an adverse effect on fish may occur if dry S5 and S6 streams, directly tributary to a fish bearing stream, were not protected by a 10-metre pesticide free zone. The Board ordered that the permit be amended accordingly. Subject to that amendment, the Board found that the permit would not have an adverse effect on human health or the environment.

Based upon the evidence and arguments presented, the Board could not make any findings with respect to whether adequate consultation with First Nations had occurred. However, the Board found that the statutory requirement to provide public notice of the permit application had been met, and that the Deputy Administrator had considered information and comments provided by local First Nations before the permit was issued.

The appeal was dismissed, subject to the amendment directed.

2001-PES-012 Sunshine Coast Regional District v. Deputy Administrator, Pesticide Control Act (British Columbia Power and Hydro Authority, Third Party)
Decision Date: July 2, 2002
Panel: Alan Andison

The Sunshine Coast Regional District appealed the decision of the Deputy Administrator to issue a pesticide use permit to the British Columbia Power and Hydro Authority. The permit authorized the use of various pesticides for utility pole preservation.

The Board found that the Appellant failed to provide any evidence to support its contention that the use of pesticides, in accordance with the permit, would cause an adverse effect on the environment or human health.

The appeal was dismissed.

2002-PES-003(b) Ingmar Lee v. Deputy Administrator, Pesticide Control Act (University of Victoria, Third Party)
Decision Date: November 20, 2002
Panel: Alan Andison

Ingmar Lee appealed the decision of the Deputy Administrator to issue and endorse a pesticide control service licence to the University of Victoria. The licence allowed the University to administer certain registered landscape pesticides on campus grounds.

The Board upheld the issuance of the licence and its public land endorsement. The Board found that the Appellant failed to provide any evidence to show that the University's application of pesticides, under the licence, would cause an adverse effect on human health or the environment at the University.

The appeal was dismissed.

2002-PES-005(a) Office of the Wet'suwet'en v. Deputy Administrator, Pesticide Control Act (Canadian Forest Products Ltd., Third Party)
Decision Date: August 22, 2002
Panel: Alan Andison

The Office of the Wet'suwet'en applied for a stay of the Deputy Administrator's issuance of an approval for pesticide use. The approval authorized pesticide use on two cutblocks, in accordance with an approved pest management plan.

The Board found that the Applicant had not established that it would suffer irreparable harm if the pesticide application program proceeded as permitted.

The Board found that the Third Party may suffer some harm if the approval was stayed, because conifer seedlings in the cutblocks may die if not treated within the permitted time frame. Therefore, the balance of convenience favoured denying the stay in this case.

The application for a stay was denied.

2002-PES-007, 2002-PES-009(b), 2002-PES-010(b) Lou Fasullo on behalf of Shawnigan Water.org, Daniel Rubin on behalf of BC Pathways and Cowichan Valley Regional District v. Deputy Administrator, Pesticide Control Act (TimberWest Forest Ltd., Third Party) (Cowichan Tribes, Participant)
Decision Date: March 3, 2003
Panel: Alan Andison, David Ormerod, Lorraine Shore

The Cowichan Valley Regional District, Lou Fasullo (on behalf of Shawnigan Water.org.) and Daniel Rubin (on behalf of BC Pathways) appealed the decision of the Deputy Administrator to approve a pest management plan issued to the Third Party, TimberWest. The plan authorized the Third Party to use herbicides to manage vegetation that is competing with crop trees.

The Board found that the Cowichan Valley Regional District, Mr. Fasullo and Mr. Rubin failed to produce sufficient evidence showing that the use of herbicides in the manner outlined in the plan would cause an adverse effect on the environment or human health. The Appellants demonstrated a general concern surrounding the use of herbicides within the watersheds of various South Island communities, but the information provided was not specific to the site and to the terms of the plan. Consequently, the Board did not undertake a risk-benefit analysis to ascertain whether any adverse effect is "unreasonable."

The appeals were dismissed.

Waste Management Act

1999-WAS-06/08(d), 1999-WAS-12/13(d), 2000-WAS-01(d) Houston Forest Products Company, Northwood Inc. (now Canadian Forest Products Ltd.), Laurie Mutschke and Emily Dodd, Dave Stevens and Dr. Elizabeth Bastian v. Assistant Regional Waste Manager (West Fraser Mills Ltd. (D.B.A. Pacific Inland Resources), Third Party) (British Columbia Lung Association, Participant)

Decision Date: April 25, 2002

Panel: Marilyn Kansky, Carol Quin, Phillip Wong

Laurie Mutschke and Emily Dodd, Dave Stevens and Dr. Bastian (the "Individual Appellants") appealed three decisions by the Regional Manager to amend three permits, which authorized emissions from what are commonly known as "beehive burners." The three amended permits were held by West Fraser Mills Ltd., Northwood Inc. ("Canfor") and Houston Forest Products Company ("Houston"). Canfor and Houston also appealed the amendments as they pertained to their respective permits. Numerous issues were raised in the five appeals.

The Board first determined that the provisions of the amended *Wood Residue Burner and Incinerator Regulation* (the "*Amended Regulation*") and *Rebate of Waste Management Fees Regulation* did not render the Individual Appellants' appeal moot. The Board next found that all of the Regional Manager's amendments to Canfor's and Houston's permits were made "for the protection of the environment," and were reasonable. The Board also found that the amendments did not conflict with the *Amended Regulation*, except for one amendment requiring that images from a Webcam system be displayed on the Internet.

The Board then considered whether it should vary the Regional Manager's decision with respect to each permit. After finding that it would not be a breach of procedural fairness or a denial of natural justice to consider and impose any or all of the Individual Appellants' proposed amendments, the Board considered whether it was reasonable to order the proposed amendments. The Board concluded that some aspects of the proposed amendments should be included in the permits held by Canfor and Houston, and ordered that those permits be referred back to the Regional Manager to add provisions addressing burner phase-out progress reporting, and burner operations. The Board also directed the Regional Manager to consult with Houston regarding "episode management," and with Canfor regarding permit amendments with respect to the Environmental Protection Plan.

Finally, the Board considered whether the terms of the permits violated section 15(1) of the *Canadian Charter of Rights and Freedoms* and found that the Individual Appellants failed to establish a *Charter* violation.

The appeals by Canfor and Houston were dismissed. The Individual Appellants' appeal against West Fraser's amended permit was dismissed. The Individual Appellants' appeals against the amended permits of Canfor and Houston were allowed, in part.

1999-WAS-022 and 2001-WAS-031 Friends of Granby Environmental Society v. Assistant Regional Waste Management (Roxul (West) Inc., Third Party)

Decision Date: May 3, 2002

Panel: Alan Andison, Glen Ewan, Q.C., Phillip Wong

The Friends of Granby Environmental Society appealed a 1999 permit authorizing air emissions from the Third Party's mineral wool processing plant, and a 2001 amendment to that

permit. The Board found that the proper question was whether the permit, as amended, included appropriate conditions for the protection of the environment not whether the 1999 permit should have been issued. On that question, the Board concluded that the Regional Manager had adequate information to issue and amend the permit and that there was insufficient evidence that the permit amendment would create an unacceptable risk to human health or the environment. However, the Board ordered the Regional Manager to add a clause to the permit specifying the frequency of stack sampling and monitoring, a clause specifying the date on which the Third Party will commence submitting its reports to the Regional Manager and a requirement that stack sampling results be made available to the public.

Finally, the Board recommended that the Regional Manager explore options for developing an airshed management program, including enhanced continuous monitoring, and, if warranted, an episode management plan, and ensure that all point source dischargers take part in such programs.

The Board confirmed the Regional Manager's issuance and amendment of the permit subject to directions and recommendations. The appeals were dismissed.

1999-WAS-023(b) City of Cranbrook v. Assistant Regional Waste Manager (Canadian Pacific Railway, Third Party) (Arlene Ridge on behalf of the Fort Steele Residents, Applicant)
Decision Date: August 20, 2002
Panel: Alan Andison

Arlene Ridge applied, on behalf of the Fort Steele Residents (the "Residents"), for participant status in the above-noted appeal against an amendment to a permit. The Residents wished to make a short presentation at the appeal hearing for the purpose of providing information on the effects of the Appellant's sewage lagoons on local surface and groundwater.

The Board found that the Residents have a valid interest in the subject matter of the appeal, and may have evidence that is relevant to the appeal, given their local knowledge of surface and groundwater. Therefore, the Board granted the Residents participant status in the appeal, but limited their participation to a one-hour presentation.

The application for participant status was granted.

2000-WAS-024 and 2000-WAS-025 Ernie Marven and Organic Producers Association of Cawston and Keremeos v. Assistant Regional Waste Manager (Greater Vancouver Sewerage & Drainage District and Roger Mayer dba Mayer Ranch, Third Parties)
Decision Date: April 11, 2002
Panel: Joan Young, Don Cummings, Carol Quin

The Appellants appealed the decision of the Regional Manager to issue a permit to the Greater Vancouver Sewerage & Drainage District and the Mayer Ranch. The permit authorized the discharge of biosolids (treated municipal sewer sludge) as a fertilizer and soil conditioner on the Mayer Ranch.

There was no dispute that the biosolids contain many potentially harmful substances that could negatively affect a number of local residents. The Board found that the ranch is located in the 100-year flood plain for the Similkameen River, and may be subject to seasonal high groundwater. Given that a number of local residents obtain drinking water from groundwater sources, and the proximity of the ranch to the river, the Board found that further investigation of the site-specific risks should have been done before the permit was issued.

In addition, the Board found that the permit did not specify sufficient safeguards for the

protection of the environment, did not set clear standards, and contained insufficient detail to determine what was actually being permitted. Further, the Board found that the permit did not ensure that a suitably qualified professional, at arm's length from the parties, would conduct testing and monitoring. For all of these reasons, the Board found that the permit would not ensure "protection of the environment" in accordance with the requirements of the *Waste Management Act*.

The permit was rescinded. The appeals were allowed.

2000-WAS-028(b); 2000-WAS-031(b) Joan Sell and Don McIver on behalf of the Sierra Club of British Columbia – Quadra Island Group et al. and Reach for Unbleached! v. Assistant Regional Waste Manager (Island Cogeneration Limited Partnership, Third Party)

Decision Date: April 25, 2002

Panel: Alan Andison, Carol Quin, Bob Radloff

The Appellants appealed the decision of the Regional Manager to issue a permit to Island Cogeneration Limited Partnership. The permit authorized Island Cogeneration to discharge air contaminants from the Island Cogeneration Project ("ICP") power facility located in Campbell River.

The Board first considered whether it was bound to show deference to the Regional Manager, and concluded that it was not, since the appeal proceeded as a hearing *de novo*. The Board then considered the merits of the appeals. The Board found that the Regional Manager did not issue the permit based on inadequate or flawed data and assumptions; that the ICP plant was operating in an efficient manner without the need for a permit amendment to require lower nitrogen oxide emission levels; and that the Regional Manager did not err in failing to regulate the sulphur content of the main fuel source. However, the Board found that the permit should be amended to allow for the burning of oil (as an alternate fuel) in excess of 10 days only in the case of an emergency.

The Board also found that the permit should be amended to account for low load circumstances such as commissioning and testing, and that the permit be amended to require monitoring of $PM_{2.5}$ emissions from the ICP plant stack.

The permit was upheld, subject to the amendments ordered by the Board. The appeals were dismissed.

Island Cogeneration applied for an order for costs. The application for costs was denied.

2001-WAS-011(b) and 2001-WAS-012(b) Petro-Canada Limited and Alfred and Norma Penner v. Regional Waste Manager (Linda Geddes, Husky Oil Operations Limited and Mohawk Oil Company Limited, Race Trac Fuels Ltd. and Wildwood Swifty's Foods Ltd., Third Parties)

Decision Date: January 29, 2003

Panel: Alan Andison, Dr. Robert Cameron, Joanne Dunaway

Petro-Canada Limited and the Penners filed separate appeals against a decision of the Regional Manager to issue a remediation order naming the Penners, Petro-Canada and Wildwood Swifty's Foods Ltd. as persons responsible for remediation of contamination at and adjacent to the Wildwood Gas Bar. The order characterized the Wildwood Gas Bar, and two neighbouring properties (the Geddes Lands and the McCombe Lands), as properties contaminated by petroleum related hydrocarbons.

The Board found that, on a balance of probabilities, the Gas Bar was not the source of contamination on the Geddes and McCombe Lands. The Board reversed the decision of the Regional Manager to issue the order and found

that the Penners, Petro-Canada, and any other persons who owned or operated the Gas Bar are not responsible persons in respect of the benzene contamination on the Geddes Lands, McCombe Lands, or at the Gas Bar, under the *Waste Management Act*.

The appeals were allowed.

The Penners, Petro-Canada, Ms. Geddes, and Race Trac Fuels Ltd. also requested an order for costs. The applications for costs were denied.

2001-WAS-025 Canadian National Railway Company v. Regional Waste Manager (Beazer East, Inc., and Atlantic Industries Ltd., Third Parties)

Decision Date: May 24, 2002

Panel: Alan Andison

The Canadian National Railway Company ("CNR") appealed the decision of the Regional Manager refusing CNR's request to amend or cancel a remediation order to remove CNR from the order. CNR and the Third Parties were named in the order as persons responsible for remediation of a contaminated site. The Regional Manager argued that the decision was not appealable; therefore the Board did not have jurisdiction to hear the appeal. The Regional Manager applied to have CNR's appeal dismissed for lack of jurisdiction.

The Board found that, based on the language in section 43 of the *Waste Management Act*, a failure or refusal to "exercise a power" is not an appealable decision. The Board further found that if parties to an order could appeal a refusal to amend the order, there would be uncertainty and increased delays in the remediation process. As it was not an appealable decision, the Board had no jurisdiction over the appeal.

The Regional Manager's application was granted. CNR's appeal was dismissed.

2001-WAS-033(b) Ashcroft Manor & Teahouse Ltd., Kim Jenner and Audrey Nelson v. Assistant Regional Waste Manager (Greater Vancouver Regional District, Third Party)

Decision Date: April 12, 2002

Panel: Glen Ewan, Q.C.

The Appellants appealed the Regional Manager's issuance of an approval to the Greater Vancouver Regional District. The approval allowed the Regional District to deposit biosolids on parts of the Ashcroft Ranch. The Appellants appealed on the basis that the use of the biosolids caused offensive odours that adversely affected their business.

The Board found that the Appellants had not established that the odours came from the biosolids on Ashcroft Ranch. However, the Board concluded that some minor amendments could be made to the approval to address some of the Appellants' concerns. The Board confirmed the approval, subject to several minor amendments.

The appeal was allowed, in part.

2002-WAS-002 Copper Beach Estates Ltd. v. Director of Waste Management (Government of British Columbia, Third Party)

Decision Date: September 30, 2002

Panel: Don Cummings

Copper Beach Estates Ltd. appealed the Director's issuance of an approval to the Government of British Columbia. The approval allowed certain amounts of acid rock drainage to be discharged from the Britannia Mine during the Government's plug test program, conducted to gather remediation information for the site.

Copper Beach objected to the approval on a number of grounds including claims that the Director did not comply with the *Public Notice Regulation*, the approval was vague and based on misleading information, and the Director's actions and decisions raised a reasonable apprehension of bias.

The Board found that the facts of this case did not support Copper Beach's claims. The Board found that, despite minor technical defects in the application process, the Director ultimately acted in accordance with the *Regulation*; that the approval was neither vague nor based on misleading statements; and that the Director had sufficient information about the plug test program to make an appropriate decision. Finally, the Board found that the allegation of bias was not established.

The Director made an application for costs against Copper Beach. The Board found there were no special circumstances in this case to justify an award of costs.

The appeal was dismissed. The application for costs was denied.

2002-WAS-006(a) Imre Szabo v. Regional Waste Manager

Decision Date: October 1, 2002

Panel: Alan Andison

Imre Szabo appealed the issuance of a preliminary site investigation order by the Regional Manager on the grounds that the order was not warranted under section 26.2 of the *Waste Management Act*. The order required Mr. Szabo to undertake a preliminary site investigation to determine whether property that he owns is contaminated. The property had been operated as a gas station for numerous years.

The Board found that, based upon the evidence presented, it was reasonable for the Regional Manager to order a preliminary site investigation to ascertain the nature and level of risk at this site.

The appeal was dismissed.

2002-WAS-008(a) Britannia Mines and Reclamation Corp. v. Director of Waste Management (Province of British Columbia, Third Party)

Decision Date: September 17, 2002

Panel: Alan Andison

Britannia Mines and Reclamation Corp. appealed a letter issued by the Director, addressed to both itself and the Province. The Director and the Province applied to have the appeal dismissed on the grounds that the Board did not have jurisdiction over the appeal.

The Board found that the letter did not contain an appealable decision. The application was granted.

The appeal was dismissed.

2002-WAS-011(a) Imperial Oil Limited and South Pacific Development, Ltd. v. Assistant Regional Waste Manager (Husky Oil, No. 158 Seabright Holdings Ltd. and No. 159 Seabright Holdings Ltd., Third Parties)

Decision Date: September 24, 2002

Panel: Alan Andison

South Pacific Development, Ltd. applied for a stay of the remediation order, as it pertains to South Pacific. The Regional Manager issued the order to both South Pacific and Imperial Oil Limited.

The Board found that South Pacific failed to establish that it would suffer irreparable harm should the stay be denied. Conversely, the Board found that there were some environmental concerns that should be remediated promptly. The Board also noted that South Pacific did not dispute its status as a previous owner and operator of the site. The Board concluded that the balance of convenience favoured denying the stay.

The application for a stay was denied.

2002-WAS-011(b) and 2002-WAS-010 South Pacific Development, Ltd. and Imperial Oil Limited v. Assistant Regional Waste Manager (Husky Oil Limited, No. 158 Seabright Holdings Ltd., and No. 159 Seabright Holdings Ltd., Third Parties) (City of Vancouver and Paulina Chen, Participants)

Decision Date: October 28, 2002

Panel: Cindy Derkaz

South Pacific and Imperial Oil appealed a remediation order issued by the Regional Manager to address off-site contamination originating from a property where a gasoline service station had been operated. The Appellants claimed that they should not have been named in the order as responsible persons, and also sought to amend the order to include Seabright Holdings No. 158 and 159 ("Seabright") as responsible persons.

The Board upheld the naming of South Pacific and Imperial Oil as persons responsible for remediation, and decided not to amend the order to include Seabright. The Board found that Imperial Oil was a responsible person by virtue of its former ownership of the source property and that it was not covered by an indemnity clause respecting liability for remediation.

The appeals were dismissed.

2002-WAS-016(a) and 2002-WAS-017(a) Beazer East, Inc. and Canadian National Railway Company v. Director of Waste Management (Province of British Columbia, Atlantic Industries Limited, North Fraser Port Authority, The Queen in Right of Canada, and Land and Water British Columbia, Inc., Third Parties)

Decision Date: October 23, 2002

Panel: Alan Andison

Beazer East, Inc. and Canadian National Railway Company ("CNR") filed separate appeals of a decision in a letter issued by the Director denying CNR's application to add four persons to a remediation order. The Board found that the letter advising of the Director's refusal to name additional responsible persons to the remediation order did not constitute an appealable "decision," since a failure or refusal to exercise a power is not an appealable decision under section 43 of the *Waste Management Act*. Therefore, the Board had no jurisdiction over the appeals.

The appeals were dismissed.

2002-WAS-020(b), 023(a), 024(a) Philip Fleischer, Sliammon First Nation and Paddy Goggins v. Assistant Regional Waste Manager (NorskeCanada, General Partnership, Third Party)

Decision Date: February 5, 2003

Panel: Alan Andison, Cindy Derkaz, Dr. Robert Cameron

The Appellants filed separate appeals against the decision of the Regional Manager to make a temporary amendment to NorskeCanada's waste permit. The temporary amendment authorised the Third Party to complete a 10-week tire derived fuel ("TDF") trial on Power Boiler #19, at its pulp and paper mill in Powell River.

The Board first considered whether the Regional Manager should have assessed the impact that using TDF in Power Boiler #19 would have on the scrap tire recovery program and the tire derived product ("TDP") market in BC. The Board concluded that, although the Regional Manager has the discretion to consider such implications, the temporary amendment has no impact on the scrap tire recovery program and the TDP market in BC because the TDF used for the testing is from a stockpile that is unsuitable for TDP. However, the Board varied the permit to require that this stockpile be the source of TDF.

On the issue of whether there was adequate consultation with the Sliammon First

Nation, whose original village is situated at the pulp mill site, the Board concluded that the Sliammon First Nation did not prove, on the balance of probabilities, that there was a requirement to consult with it regarding a possible infringement of aboriginal rights or title.

The Board further found that the temporary amendment would not cause an unacceptable adverse effect on human health or the environment. The Board was concerned that sulphur dioxide emission limits allowed under the amendment may be excessive, but found that it did not have sufficient evidence before it to lower the limits for the purpose of the testing. The Board further noted that the amendment allows a short-term test in which emission levels can be monitored to determine actual emission levels, and, in these circumstances, it is not unreasonable to permit an emission limit that may be higher than would be permitted over the long term.

Finally, the Board made several minor amendments to the permit.

The appeals were allowed, in part.

2003-WAS-001 Atlantic Industries Ltd. and Michael Wilson v. Assistant Regional Waste Manager (Beazer East, Inc. and Canadian National Railway Company, Third Parties)
Decision Date: February 19, 2003
Panel: Alan Andison

The Applicants requested a stay of an amended remediation order issued by the Assistant Regional Waste Manager on December 9, 2002.

The issue in this application was whether the Board should grant a stay of the amended remediation order pending a decision on the merits of the appeals.

The Board held that there were serious issues to be tried. However, the Board found that the Applicants did not demonstrate that they would suffer irreparable harm if a stay was not granted. The Board further found that, on a balance of convenience, harm to the Third Parties, the Assistant Manager, and the public interest if a stay was granted outweighed any potential harm to the Applicants if a stay was denied.

The application for a stay was denied.

2003-WAS-003(a) Spike Investments Ltd. v. Assistant Regional Waste Manager
Decision Date: February 13, 2003
Panel: Alan Andison

Spike Investments Ltd. applied for a stay of the site investigation order issued by the Regional Manager. The order required Spike to submit all existing site investigation information and to complete a detailed site investigation for a property contaminated by gasoline.

While the Board found that serious issues had been raised, it concluded that Spike had not introduced sufficient evidence to support its assertion that irreparable financial harm would result if a stay was not granted. On the question of the balance of convenience, the Board found that the risk of irreparable harm to the environment and public interest, if a stay was granted, exceeded the risk of financial harm to Spike if the stay was denied.

The application for a stay was denied.

2003-WAS-006(a), 007(a), 008(a), 009(a), 010(a) British Columbia Power and Hydro Authority, Imperial Oil Limited, BC Rail Ltd., City of Quesnel, and Shell Canada Products Limited v. Regional Waste Manager
Decision Date: March 21, 2003
Panel: Alan Andison

The Appellants applied for a stay of the order issued by the Regional Waste Manager requiring the aforementioned parties to submit

and implement a remediation plan to address contamination on several properties.

While the Board found that the appeal raised serious issues to be decided, it concluded that the Applicants failed to demonstrate that the refusal to grant a stay would result in irreparable harm to the Applicant's interests. In particular, no evidence was presented showing that paying the costs associated with the remediation would result in permanent market loss, bankruptcy or company shut down. The Board also noted that each of the Applicants has a remedy for recovery of remediation costs under section 27(4) of the *Waste Management Act*. On the issue of the balance of convenience, the Board found that the potential harm to human health, the environment, and public interest if a stay was granted exceeded the potential harm to the interests of the Applicants if a stay was denied. A stay would delay the remediation process, and there are legitimate concerns about the migration of contaminants into the Quesnel River.

The applications for a stay were denied.

Water Act

1998-WAT-023 A.M. Anderson, R.J. Anderson, S.G. Anderson and M.P. Edwards v. Assistant Regional Water Manager (Lower Nicola Indian Band, Highland Valley Copper Corporation, Phyllis Leese, Ministry of Water, Land and Air Protection, Bruce Vichert, Simon Klaudt, and Fisheries and Oceans Canada, Third Parties)
Decision Date: October 1, 2002
Panel: Alan Andison

The Appellants appealed the Regional Manager's refusal of their application for a licence to divert water from Guichon Creek. The Regional Manager refused the licence stating that there was insufficient water for a new licence.

The Board found that there was insufficient water in the creek to grant the Appellants a new licence. Although the Board agreed with the Appellants that there had been undue delay in dealing with their application, the Board concluded that the application was properly refused due to insufficient water.

The Lower Nicola Indian Band submitted that it had not been consulted about this licence application and, therefore, the Board could not allow the appeal and grant the licence. The Board found that the Regional Manager has a duty to consult with First Nations about applications that may infringe aboriginal rights to access and use of water. However, as the application has been refused, the Board found that no further consultation with the Band is required unless the application is reconsidered.

The appeal was dismissed.

2000-WAT-015 White Bear Water Ltd. v. Deputy Comptroller of Water Rights
Decision Date: April 2, 2002
Panel: Alan Andison

White Bear Water Ltd. appealed the order of the Deputy Comptroller cancelling a conditional water licence that authorized White Bear to build certain water works and export bulk water. White Bear requested that the Board reverse the cancellation order, and order an extension of time for constructing the works and making beneficial use of the water authorized under the licence.

The Board found that White Bear was given a fair opportunity to be heard before the order was issued; there was no evidence that the Deputy Comptroller failed to consider either White Bear's submissions, the interests and efforts of White Bear and its principals, or the interests of the Hartley Indian Band when he made the order; and that

cancelling the licence was an appropriate exercise of the Deputy Controller's broad discretionary powers. The Board found that White Bear had not constructed the works authorized under the licence and had not made beneficial use of the water, despite being granted extensions of time to construct the works.

The appeal was dismissed.

2001-WAT-006 Elsie Mychaluk v. Deputy Comptroller of Water Rights

Decision Date: July 19, 2002

Panel: Margaret Eriksson

Elsie Mychaluk appealed the decision of the Deputy Comptroller confirming that she was required to pay 17 years of outstanding fees associated with two water licences, including fees for approximately five years when she did not own the appurtenant land. Due to an administrative oversight, the Water Management Branch had failed to process changes to the licences, or issue any invoices associated with the licences, for 17 years.

The Board found nothing in the language of the *Water Act* or the *Water Regulation* to support the Deputy Comptroller's position that a person, other than the licence holder at the time the fees accrued, can be invoiced in place of that licence holder. Therefore, the Board found that the Appellant was not liable for fees accrued before she owned the property.

The Board also found that the Appellant should have been informed of the status of the licences after she purchased the property, and that rentals and fees associated with these licences were not included on the invoices issued to her between 1988 and 1999.

Finally, the Board found that a 17-year delay in processing the licences was unreasonable; that the process applied by the Ministry was arbitrary; and that the assessment was issued without a comptroller first having exercised his or her authority under section 7 of the *Water Regulation*. The Board found that the Appellant had no notice that unassessed rentals and fees were accruing, and it was a breach of duty of fairness to hold her responsible for any rentals or fees pre-dating the issuance of the new licences.

The Board ordered the Water Management Branch to adjust the Appellant's account.

The appeal was allowed.

2001-WAT-009 Louis Cooke v. Engineer under the Water Act (Nicola Watershed Community Round Table, Department of Fisheries and Oceans, Coldwater Indian Band, Lajos Katona, Third Parties)

Decision Date: May 23, 2002

Panel: Alan Andison

Louis Cooke appealed the decision of the Engineer ordering Mr. Cooke to install a cumulative flow-measuring device at his pump intake, and provide monthly flow records of his diversion practice from Coldwater River.

The Board found that, on a balance of probabilities, the Appellant was diverting more water than he was entitled to under his licence. The Board also found that the over-diversion may detrimentally affect fish stocks in the Coldwater River, and that it was reasonable for the Ministry to monitor the Appellant's water use to prevent further over-diversion. Therefore, the Board found that the Engineer's order was reasonable in the circumstances.

The appeal was dismissed.

2001-WAT-017 Russell Halisheff v. Assistant Regional Water Manager (Michael Halisheff, Third Party)

Decision Date: April 16, 2002

Panel: Margaret Eriksson

Russell Halisheff appealed the decision of the Regional Manager to grant a conditional water

licence to the Third Party. The licence authorized the Third Party to divert and use water for domestic purposes from the Slocan River through works (diversion structure, tank, pump and pipeline) crossing land owned by the Appellant. The Appellant submitted that the Third Party could obtain water from an alternate source on his own property, and that the licence should not have been granted.

The Board found that the *Water Act* does not expressly require consideration of alternate sources of water supply, diversion points or works. However, the decision-maker has discretion to consider alternatives when it is relevant and appropriate to do so. In this case, the Board found that the Regional Manager requested more information from the Third Party about alternate water sources, diversion points and routes for works, and whether such alternatives were reasonable. He also considered how the Appellant would be affected by the licence. The Board found that the approved works and diversion point were the most practical way of supplying domestic water to the Third Party, and they did not constitute an unreasonable interference with the Appellant's land. The Board concluded that the decision of the Regional Manager was reasonable in the circumstances.

The appeal was dismissed.

2001-WAT-023 490228 BC Ltd. v. Assistant Regional Water Manager (Arnold McCombs, Third Party)
Decision Date: July 9, 2002
Panel: Jane Luke

The Appellant company appealed the Regional Manager's decision to issue a conditional water licence to the Third Party. The Appellant claimed that the Third Party's water licence allowed for the diversion of water from the same source that the Appellant had a licence to divert water from. The Appellant claimed that it was not given notice of the Third Party's application, and that its licence had priority over the Third Party's licence.

On the basis of an agreement entered into by the parties at the hearing, the Board dismissed the appeal.

The appeal was dismissed.

2001-WAT-026 Terrence G. Martinich v. Assistant Regional Water Manager (Pender Island Golf and Country Club, Third Party)
Decision Date: October 25, 2002
Panel: Joan Young

Terrence Martinich appealed the Regional Manager's decision to issue a licence on Grimmer Bay Creek to the Third Party.

The Board found that it was reasonable and fair for the Regional Manager to follow Water Management policy and set the date of precedence as corresponding to the date the Third Party applied for the licence. The Board also found that the Appellant had not been prejudiced by any deficiency in the posting of the licence application. Finally, the Board found that the Appellant's water rights would not be injuriously affected by the Third Party's licence.

However, the Board found that there were many deficiencies with the dam and spillway. The Board ordered that the licence be amended to include a condition requiring the Third Party to implement a work plan to remedy the problems, to the satisfaction of a professional engineer, by a specified date.

The appeal was allowed, in part.

2001-WAT-027 Otto Hess v. Assistant Regional Water Manager, (Michel and Nenita Paquette, Third Parties) (Alexander and Jeanne Crawford, Participant)
Decision Date: May 15, 2002
Panel: Don Cummings

Otto Hess appealed the decision of the Regional Manager to issue a water licence to the Third Parties authorizing the diversion of water from Gleaner Creek. The Appellant had a pre-existing water licence to divert water from Hess Spring for irrigation. He claimed that Hess Spring is recharged by Gleaner Creek and, therefore, the Third Parties' licence has a detrimental impact on his ability to irrigate his orchard.

The Board found that the flow of water from Hess Spring may be dependant upon flow from Gleaner Creek. However, since none of the parties provided expert evidence on that point, the Board recommended that a study be undertaken to determine how much water can be diverted from Gleaner Creek without affecting the Appellant's water supply. Until the study is complete, the Board varied the Third Parties' licence by requiring the diversion works to be modified so that the one-half of the flow in Gleaner Creek goes to the Third Parties and the other half proceeds downstream. All other terms of the licence were upheld.

The appeal was dismissed.

2002-WAT-001 Peter and Wendy Morris v. Assistant Regional Water Manager
Decision Date: June 26, 2002
Panel: Joan Young

The Morris' appealed the Regional Manager's refusal to issue them a water licence. At the appeal hearing they advised the Board that they wished to abandon their appeal. The Board granted their request.

The appeal was dismissed.

2002-WAT-030 W. Greg Filion v. Assistant Regional Water Manager
Decision Date: September 24, 2002
Panel: Alan Andison

Mr. Filion appealed a decision of the Regional Manager denying his application for a water licence to divert and use water from an unnamed creek to generate power for his placer mine operation. The Regional Manager denied the licence on the grounds that Mr. Filion did not qualify for a water licence under the *Water Act*.

The Board found that the Regional Manager erred in his interpretation of the Act. The Board referred the water licence application back to the Regional Manager with directions to issue a licence.

The appeal was allowed.

2003-WAT-003(a) Columbia Power Corporation v. Comptroller of Water Rights (Teck Cominco Metals Ltd., Third Party)
Decision Date: March 19, 2003
Panel: Alan Andison

The Comptroller and Teck Cominco Metals Ltd. challenged the standing of the Columbia Power Corporation to bring an appeal against the decision of the Comptroller to issue an approval to Teck under the *Water Act*, for short-term diversion and use of water at the Waneta dam and hydroelectric facility on the Pend d'Oreille River.

The Board found that Columbia had no ownership or possession of any riparian lands on the Pend d'Oreille River. Therefore, Columbia had no standing to appeal as a riparian owner. Furthermore, even if Columbia is a riparian owner, it failed to provide evidence showing how the exercise of rights by Teck, under the approval, would have an adverse effect on the riparian lands that Columbia claimed to own.

The appeal was dismissed for lack of jurisdiction.

Wildlife Act

2001-WIL-024 and 2001-WIL-025 Gregory Allen and Wade Mullen v. Conservation Officer
Decision Date: April 11, 2002
Panel: Alan Andison

Gregory Allen and Wade Mullen each appealed the decisions of a Conservation Officer refusing to issue them permits to possess the antlers of two Roosevelt Elk. The Appellants asked that the decisions be set aside, and that they be issued permits to possess the antlers.

The Board found that the Appellants did not qualify for possession permits under any of the relevant sections of the *Permit Regulation*. The Board found that the Conservation Officer did not err when he refused to issue permits to the Appellants authorizing the possession of, or transferring the right of property in, the antlers.

The appeals were dismissed.

2002-WIL-001 Constandinos Calfountzos v. Deputy Director of Wildlife
Decision Date: April 5, 2002
Panel: Joan Young

Mr. Calfountzos appealed the decision of the Deputy Director cancelling his hunting licence for one year and requiring him to successfully complete the Conservation and Outdoor Recreation Education examinations before being eligible to reapply for hunting privileges.

The Board found that the licence cancellation was reasonable in the circumstances and that there were no grounds to conclude that there had been a lack of procedural fairness or substantial prejudice due to any delay prior to the issuance of the Deputy Director's decision.

The appeal was dismissed.

2002-WIL-002 Shereena Grosset v. Regional Fish and Wildlife Manager
Decision Date: October 4, 2002
Panel: Alan Andison

Shereena Grosset appealed a decision of the Regional Manager concerning her quotas of angler days on several rivers. Shereena Grosset and the Regional Manager agreed to the terms of a consent order to dispose of the appeal.

By consent of the parties, the appeal was allowed, in part.

2002-WIL-003, 004, 005 Henry Fercho, Vince Cocciolo and Robert Fontana v. Regional Wildlife Manager
Decision Date: May 1, 2002
Panel: Cindy Derkaz

Guide outfitters Henry Fercho, Vince Cocciolo, and Robert Fontana appealed the decisions of the Regional Manager assigning them quotas of one, zero, and one grizzly bear, respectively, for the 2002 hunting season.

The Board found that the Regional Manager considered the appropriate factors and reached a reasonable and supportable conclusion in assigning the Appellants' quotas. He did not fetter his discretion. The Board also found that the Appellants provided no evidence to support their assertion that the 2001 moratorium on grizzly bear hunting had a beneficial impact on the grizzly bear population.

The appeals were dismissed.

2002-WIL-006 Houston and District Chamber of Commerce v. Regional Fish & Wildlife Manager (Town of Smithers, Third Party)
Decision Date: May 29, 2002
Panel: Alan Andison

The Houston and District Chamber of Commerce appealed the decision of the Regional

Manager to issue a permit that authorized the Mayor of the Town of Smithers to possess a grizzly bear hide on behalf of the Town and the Northwest Wildlife for the Future. The permit allowed the hide to be displayed for educational purposes.

The Board concluded that any defects in the permit application process were not sufficient to justify a rescission of the permit. The Board also found that the allegations of bias and conflict of interest were not supported by the evidence and concluded that the decision to grant the permit to the Mayor of the Town of Smithers was reasonable in the circumstances.

The appeal was dismissed.

2002-WIL-007 Colin Priest v. Regional Manager of Fish, Wildlife & Habitat
Decision Date: July 26, 2002
Panel: Alan Andison

Colin Priest appealed the Regional Manager's decision to refuse Mr. Priest's application for a permit to possess dead wildlife, in this case a cougar, for societal or ceremonial purposes.

The Board found that the Appellant had requested possession of the cougar either for personal display or monetary purposes. The Board found that neither of these purposes qualified as a ceremonial or societal purpose within the meaning of the *Permit Regulation*. The Board also considered various other sections of the Regulation, but concluded that the Appellant did not qualify for a permit.

The appeal was dismissed.

2002-WIL-010 Ken Robins v. Regional Manager
Decision Date: October 22, 2002
Panel: Alan Andison

Guide outfitter Ken Robins appealed the Regional Manager's decision to assign him a quota of zero grizzly bears for the 2002 hunting season.

The Board found that, pursuant to the *Limited Entry Hunting Authorization Regulation*, grizzly bear hunting was not permitted in the Appellant's guiding territory when the Regional Manager issued the licence. The Regional Manager did not have the authority to issue the Appellant a grizzly bear quota, and, therefore, neither did the Board. Although the Regional Manager should have advised that he had no authority to issue a grizzly bear quota for the Appellant's territory, the appeal was conducted as a "new hearing" and it cured any procedural defects in the process conducted by the Regional Manager.

The appeal was dismissed.

Summaries of Court Decisions Related to the Board

Turnagain Holdings Ltd. v. Environmental Appeal Board et al., [2002] B.C.C.A. No. 564

Decision Date: October 8, 2002

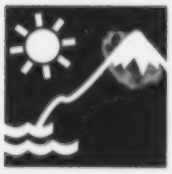
Court: B.C.C.A., Huddart, Hall, Mackenzie JJ.A.

In 2000, Turnagain Holdings Ltd. applied for judicial review of the Board's 1993 decision which upheld the Deputy Director's refusal to allow Turnagain to call witnesses and make final submissions during a hearing under the *Wildlife Act* (Appeal No. 92/23-Wildlife). The hearing related to the suspension of a guide outfitters licence and the cancellation of a guide outfitter certificate that were held in trust for Turnagain.

On review, the British Columbia Supreme Court found that the Board erred by failing to find that the Deputy Director had breached a duty of fairness to Turnagain. However, the Court also found that the seven year delay in commencing the judicial review was unreasonable, and that the Ministry would suffer substantial prejudice if the Court granted the relief requested. Therefore, the Court dismissed Turnagain's petition.

Turnagain appealed this ruling to the British Columbia Court of Appeal. The Court of Appeal held that the Supreme Court properly dismissed the petition and refused to grant relief, notwithstanding the finding that the duty of fairness was breached.

The appeal was dismissed.



Summaries of Cabinet Decisions Related to the Board

There were no orders by Cabinet during this report period concerning decisions by the Board.

APPENDIX I

Legislation and Regulations

Reproduced below are relevant provisions from the *Environment Management Act*, the Environmental Appeal Board Procedure Regulation, and each of the statutes from which the Board hears appeals, that were in force on March 31, 2003.

Environment Management Act

Environmental Appeal Board

11 (1) The Lieutenant Governor in Council must establish an Environmental Appeal Board to hear appeals that under the provisions of any other enactment are to be heard by the board.

(2) In relation to an appeal under another enactment the board has the powers given to it by that other enactment.

(3) The board consists of a chair, one or more vice chairs and other members the Lieutenant Governor in Council appoints.

(4) The Lieutenant Governor in Council may

(a) appoint persons as temporary members to deal with a matter before the board, or for a period or during circumstances the Lieutenant Governor in Council specifies, and

(b) designate a temporary member to act as chair or as a vice chair.

(5) A temporary member has, during the period or under the circumstances or for the purpose for which the person is appointed as a temporary member, all the powers of and may perform all the duties of a member of the board.

(6) The Lieutenant Governor in Council may determine the remuneration and expenses payable to the members of the board.

(7) The chair may organize the board into panels, each comprised of one or more members.

(8) The members of the board are to sit

(a) as a board, or

(b) as a panel of the board.

(9) If members sit as a panel,

(a) 2 or more panels may sit at the same time,

(b) the panel has all the jurisdiction of and may exercise and perform the powers and duties of the board, and

(c) an order, decision or action of the panel is an order, decision or action of the board.

(10) The number of members that constitute a quorum of the board or a panel may be set by regulation of the Lieutenant Governor in Council.

(11) The board, a panel and each member have all the powers, protection and privileges of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

(12) In an appeal, the board or a panel

(a) may hear any person, including a person the board or a panel invites to appear before it, and

(b) on request of

(i) the person,

(ii) a member of the body, or

(iii) a representative of the person or body,

whose decision is the subject of the appeal or review, must give that person or body full party status.

(13) A person or body that is given full party status under subsection (12) may

(a) be represented by counsel,

(b) present evidence,

(c) where there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(14) A person who gives oral evidence may be questioned by the board, a panel or the parties to the appeal.

(14.1) The appeal board may require the appellant to deposit with it an amount of money it considers sufficient to cover all or part of the anticipated costs of the respondent and the anticipated expenses of the appeal board in connection with the appeal.

(14.2) In addition to the powers referred to in subsection (2) but subject to the regulations, the appeal board may make orders for payment as follows:

(a) requiring a party to pay all or part of the costs of another party in connection with the appeal, as determined by the appeal board;

(b) if the appeal board considers that the conduct of a party has been vexatious, frivolous or abusive requiring the party to pay all or part of the expenses of the appeal board in connection with the appeal.

(14.3) An order under subsection (14.2) may include directions respecting the disposition of money deposited under subsection (14.1).

(14.4) If a person or body given full party status under subsection (12) is an agent or representative of the government,

(a) an order under subsection (14.2) must not be made for or against the person or body, and

(b) an order under subsection (14.2)(a) may instead be made for or against the government.

(14.5) The costs required to be paid by the government under an order under subsection (14.4)(b) must be paid out of the consolidated revenue fund.

(15) If the board or a panel makes an order or decision with respect to an appeal the chair must send a copy of the order or decision to the minister and to the parties.

Varying and rescinding orders of board

12 The Lieutenant Governor in Council may, in the public interest, vary or rescind an order or decision of the board.

Environmental Appeal Board Procedure Regulation

Interpretation

1 In this regulation

"Act" means the *Environment Management Act*;

"board" means the Environmental Appeal Board established under the Act;

"chairman" means the chairman of the board;

"minister" means the minister responsible for administering the Act under which the appeal arises;

"objector" in relation to an appeal to the board means a person who, under an express provision in another enactment, had the status of an objector in the matter from which the appeal is taken.

Application

2 This regulation applies to all appeals to the board.

Appeal practice and procedure

3 (1) Every appeal to the board shall be taken within the time allowed by the enactment that authorizes the appeal.

(2) Unless otherwise directed under the enactment that authorizes the appeal, an appellant shall give notice of the appeal by mailing a notice of appeal by registered mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested.

(4) The notice of appeal shall be signed by the appellant, or on his behalf by his counsel or agent, for each action, decision or order appealed against and the notice shall be accompanied by a fee of $25, payable to the Minister of Finance and Corporate Relations.

(5) Where a notice of appeal does not conform to subsections (3) and (4), the chairman may by mail or another method of delivery return the notice of appeal to the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(6) Where a notice of appeal is returned under subsection (5) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

Procedure following receipt of notice of appeal

4 (1) On receipt of a notice of appeal, or, in a case where a notice of appeal is returned under section 3(5), on receipt of an amended notice of appeal with the deficiencies corrected, the chairman shall immediately acknowledge receipt by mailing or otherwise delivering an

acknowledgement of receipt together with a copy of the notice of appeal or of the amended notice of appeal, as the case may be, to the appellant, the minister's office, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(2) The chairman shall within 60 days of receipt of the notice of appeal or of the amended notice of appeal, as the case may be, determine whether the appeal is to be decided by members of the board sitting as a board or by members of the board sitting as a panel of the board and the chairman shall determine whether the board or the panel, as the case may be, will decide the appeal on the basis of a full hearing or from written submissions.

(3) Where the chairman determines that the appeal is to be decided by a panel of the board, he shall, within the time limited in subsection (2), designate the panel members and,

(a) if he is on the panel, he shall be its chairman,

(b) if he is not on the panel but a vice chairman of the board is, the vice chairman shall be its chairman, or

(c) if neither the chairman nor a vice chairman of the board is on the panel, the chairman shall designate one of the panel members to be the panel chairman.

(4) Within the time limited in subsection (2) the chairman shall, where he has determined that a full hearing shall be held, set the date, time and location of the hearing of the appeal and he shall notify the appellant, the minister's office, the Minister of Health if the appeal relates to a matter under the *Health Act*, the official from whose decision the appeal is taken, the applicant, if he is a person other than the appellant, and any objectors.

(5) Repealed. [B.C. Reg. 118/87, s.2.]

Quorum

5 (1) Where the members of the board sit as a board, 3 members, one of whom must be the chairman or vice chairman, constitute a quorum.

(2) Where members of the board sit as a panel of one, 3 or 5 members, then the panel chairman constitutes a quorum for the panel of one, the panel chairman plus one other member constitutes the quorum for a panel of 3 and the panel chairman plus 2 other members constitutes the quorum for a panel of 5.

Order or decision of the board or a panel

6 Where the board or a panel makes an order or decision with respect to an appeal, written reasons shall be given for the order or decision and the chairman shall, as soon as practical, send a copy of the order or decision accompanied by the written reasons to the minister and the parties.

Written briefs

7 Where the chairman has decided that a full hearing shall be held, the chairman in an appeal before the board, or the panel chairman in an appeal before a panel, may require the parties to submit written briefs in addition to giving oral evidence.

Public hearings

8 Hearings before the board or a panel of the board shall be open to the public.

Recording the proceedings

9 (1) Where a full hearing is held, the proceedings before the board or a panel of the board shall be taken using shorthand or a recorder, by a stenographer appointed by the chairman, for a hearing before the board, or by the panel chairman, for a hearing before the panel.

(2) Before acting, a stenographer who takes the proceedings before the board or a panel shall make oath that he shall truly and faithfully report the evidence.

(3) Where proceedings are taken as provided in this section by a stenographer so sworn, then it is not necessary that the evidence be read over to, or be signed by, the witness, but it is sufficient that the transcript of the proceedings be

(a) signed by the chairman or a member of the board, in the case of a hearing before the board, or by the panel chairman or a member of the panel, in the case of a hearing before the panel, and

(b) be accompanied by an affidavit of the stenographer that the transcript is a true report of the evidence.

Transcripts

10 On application to the chairman or panel chairman, as the case may be, a transcript of the proceedings, if any, before the board or the panel of the board shall be prepared at the cost of the person requesting it or, where there is more than one applicant for the transcript, by all of the applicants on a pro rata basis.

Representation before the board

11 Parties appearing before the board or a panel of the board may represent themselves personally or be represented by counsel or agent.

Commercial River Rafting Safety Act

Appeals

6 (1) If the registrar suspends or cancels a registration, licence or permit or refuses to register or issue a licence, the person may appeal to the Environmental Appeal Board established under the *Environment Management Act*.

(2) Section 40(2) to (7) of the *Water Act* applies to an appeal under subsection (1).

Health Act

Power to make regulations

8 (2) In addition to the matters set out in subsection (1), the Lieutenant Governor in Council may make regulations with respect to the following matters:

...

(m) the inspection, regulation and control, for the purposes of health protection provided in this Act, of

...

(ii) the location, design, installation, construction, operation and

maintenance of

...

(C) sewage disposal systems,

...

and requiring a permit for them and requiring compliance with the conditions of the permit and authorizing inspections for that purpose;

...

(4) If a person is aggrieved by the issue or the refusal of a permit for a sewage disposal system under a regulation made under subsection (2)(m), the person may appeal that ruling to the Environmental Appeal Board established under section 11 of the *Environment Management Act* within 30 days of the ruling.

(5) On hearing an appeal under subsection (4), the Environmental Appeal Board may confirm, vary or rescind the ruling under appeal.

Pesticide Control Act

Appeals to Environmental Appeal Board

15 (1) For the purpose of this section, **"decision"** means an action, decision or order.

(2) Any person may appeal a decision of the administrator under this Act, or of any other person under this Act, to the appeal board.

(3) The time limit for commencing an appeal is the time limit prescribed by regulation.

(4) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(5) For the purposes of an appeal under this section, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(6) The appeal board may conduct an appeal by way of a new hearing.

(7) On an appeal, the appeal board may

(a) send the matter back to the person who made the decision being appealed, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(8) An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Pesticide Control Act Regulation

Appeals

45 (1) A person who intends to appeal to the board against the action, decision or order of the administrator or of any other person under the Act shall file the appeal in the manner required by subsection (2) within 30 days from the date of the action, decision or order against which the appeal is taken.

(2) The appellant shall file the appeal by mailing notice of appeal by registered mail to the chairman, or leaving it for him during business hours, at the address of the board.

(3) A notice of appeal shall contain the name and address of the appellant, the name of counsel or agent, if any, for the appellant, the address for service upon the appellant, grounds for appeal, particulars relative to the appeal and a statement of the nature of the order requested, and shall be signed by the appellant or on his behalf by his counsel or agent.

(4) Where a notice of appeal does not conform to subsection (3), the chairman may by mail or another method of delivery return the notice of appeal to the appellant together with written notice

(a) stating the deficiencies and requiring them to be corrected, and

(b) informing the appellant that under this section the board shall not be obliged to proceed with the appeal until a notice or amended notice of appeal, with the deficiencies corrected, is submitted to the chairman.

(5) Where a notice of appeal is returned under subsection (4) the board shall not be obliged to proceed with the appeal until the chairman receives an amended notice of appeal with the deficiencies corrected.

(6) **Repealed.** [B.C. Reg. 132/82.]

(7) The procedures on the appeal shall be those set out in the Environmental Appeal Board Procedure Regulation.

Waste Management Act

Definition of "decision"

43 For the purpose of this Part, "decision" means

(a) the making of an order,

(b) the imposition of a requirement,

(c) an exercise of a power,

(d) the issue, amendment, renewal, suspension, refusal or cancellation of a permit, approval or operational certificate, and

(e) the inclusion in any order, permit, approval or operational certificate of any requirement or condition.

Appeals to Environmental Appeal Board

44 (1) Subject to this Part, a person aggrieved by a decision of a manager, director or district director may appeal the decision to the appeal board.

(2) Nothing in this section is to be construed as applying in respect of a decision made by the minister under this Act or by the Lieutenant Governor in Council.

Time limit for commencing appeal

45 The time limit for commencing an appeal is 30 days after notice of the decision being appealed is given

(a) to the person subject to the decision, or

(b) in accordance with the regulations.

Procedure on appeals

46 (1) An appeal under this Part

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(2) The appeal board may conduct an appeal by way of a new hearing.

Powers of appeal board in deciding appeal

47 On an appeal, the appeal board may

(a) send the matter back to the person who made the decision, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

Appeal does not operate as stay

48 An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Water Act

Appeals to Environmental Appeal Board

40 (1) An order of the comptroller, the regional water manager or an engineer may be appealed to the Environmental Appeal Board established under the *Environment Management Act* by

(a) the person who is subject to the order,

(b) an owner whose land is or is likely to be physically affected by the order, or

(c) a licensee, riparian owner or applicant for a licence who considers that their rights are or will be prejudiced by the order.

(2) The time limit for commencing an appeal is 30 days after notice of the order being appealed is given

(a) to the person subject to the order, or

(b) in accordance with the regulations.

(3) For the purposes of an appeal, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise,

whichever is earlier.

(4) An appeal under this section

(a) must be commenced by notice of

appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(5) The appeal board may conduct an appeal by way of a new hearing.

(6) On an appeal, the appeal board may

(a) send the matter back to the comptroller, regional water manager or engineer, with directions,

(b) confirm, reverse or vary the order being appealed, or

(c) make any order that the person whose order is appealed could have made, and that the board considers appropriate in the circumstances.

(7) An appeal does not act as a stay or suspend the operation of the order being appealed unless the appeal board orders otherwise.

Wildlife Act

Appeals to Environmental Appeal Board

101.1(1) The affected person referred to in section 101(2) may appeal the decision to the Environmental Appeal Board established under the *Environment Management Act*.

(2) The time limit for commencing an appeal is 30 days after notice is given

(a) to the affected person under section 101(2), or

(b) in accordance with the regulations.

(3) An appeal under this section

(a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(4) The appeal board may conduct an appeal by way of a new hearing.

(5) On an appeal, the appeal board may

(a) send the matter back to the regional manager or director, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(6) An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

BRITISH COLUMBIA

QP#4500100587